

**U. S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC**

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**IN THE MATTER OF**

**A-TOPP'S MOVING & STORAGE, LLC**

**DOCKET NO.: FMCSA-2008-0360**

**(Federal Motor Carrier Safety Administration)**

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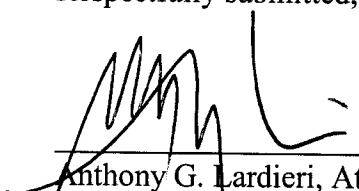
**NOTIFICATION OF SETTLEMENT**

The Field Administrator for the Federal Motor Carrier Safety Administration (FMCSA) Eastern Service Center, through his representative, hereby notifies the Administrative Law Judge that it has entered into a Settlement Agreement which finally resolves all pending issues in this case. A copy of the Settlement Agreement is attached hereto.

Pursuant to 49 C.F.R. § 386.22(d), the Field Administrator respectfully requests the Court to cancel the hearing currently scheduled for July 16, 2009 in New York, to dismiss this proceeding, and to close the docket.

Respectfully submitted,

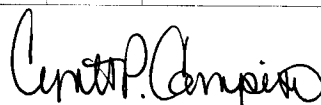
Date: 7/7/09

  
\_\_\_\_\_  
Anthony G. Lardieri, Attorney  
Federal Motor Carrier Safety Administration  
Eastern Service Center  
802 Cromwell Park Drive Suite N  
Glen Burnie, MD 21061  
(443) 703-2248

### CERTIFICATE OF SERVICE

This is to certify that on the 7<sup>th</sup> day of July 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the forgoing document to each of the parties listed below.

|  |                                      |
|--|--------------------------------------|
| The Honorable Isaac D. Benkin<br>Office of Hearings, M-20<br>1200 New Jersey Avenue, S.E.<br>East Building, Ground Floor Rm E12-320<br>Washington, DC 20590<br><i>Administrative Law Judge</i> | One Copy<br>Federal Express          |
| Michael A. Garcia, Esq.<br>2900 Gordon Avenue, Suite 100-60<br>Santa Clara, CA 95051<br><i>Counsel for the Respondent</i>  | One Copy<br>U.S. Mail                |
| US DOT DOCKETS<br>Docket Operations, M-30<br>1200 New Jersey Avenue, S.E.<br>West Building Ground Floor<br>Room W12-140<br>Washington, D.C. 20590  | Original<br>Electronically in FDMS   |
| Christopher Rotondo<br>FMCSA New Jersey Division<br>840 Bear Tavern Road, Suite 310<br>West Trenton, NJ 08628-1019<br><i>Division Administrator</i>  | One Copy<br>Electronically via email |
| FMCSA Docket Clerk<br>FMCSA - Eastern Service Center<br>802 Cromwell Park Drive Suite N<br>Glen Burnie MD 21061  | One Copy<br>Hand Delivered           |
| Steven B. Farbman, Esquire<br>1200 New Jersey Avenue, S.E.<br>Room W96-466<br>Washington DC 20590<br><i>Adjudications Counsel</i>  | One Copy<br>Electronically via email |



Cynthia P. Campise

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

|  |   |                              |
|--|---|------------------------------|
| In the Matter of                         | ) |                              |
|  | ) |                              |
| <b>A-Topp's Moving &amp; Storage LLC</b> | ) | Case No. NJ-2008-0135-US0662 |
| <b>5 Shady Street</b>                    | ) | USDOT No. 1331728            |
| <b>Paterson, NJ 07524</b>                | ) | MC No. 462129                |
|  | ) |                              |

**SETTLEMENT AGREEMENT**

The Parties to this agreement are:

**A-Topp's Moving & Storage, LLC** (hereinafter called the **RESPONDENT**);

and

The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** of the Department of Transportation (hereinafter called the **FMCSA**).

The Parties agree as follows:

1. A. The FMCSA has a pending claim against the **RESPONDENT** for violations of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations, (hereinafter referenced as FMCSRs), Hazardous Materials Regulations (hereinafter referenced as the HMRs) and/or the Federal Motor Carrier Commercial Regulations (hereinafter referenced as the FMCCRs) as follows:

In Case Number NJ-2008-0135-US0662 the FMCSA has a claim for **\$25,600.00** against the **RESPONDENT** for the following violations:

One (1) violation of 49 C.F.R. §375.213(a) – Failing to furnish shippers with required documents prior to executing an order for service.

One (1) violation of 49 C.F.R. §375.405(b) – Failing to prepare the non-binding estimate in the form and manner prescribed.

One (1) violation of 49 C.F.R. §375.407(a)/14915(a)(1) – Failing to relinquish possession of a household goods shipment if the shipper pays at least 110 percent of the approximate costs of a non-binding estimate.

One (1) violation of 49 C.F.R. §375.501(a) – Failing to prepare an order for service in the form and manner prescribed.

One (1) violation of 49 C.F.R. §375.505(b) – Failing to prepare a receipt or bill of lading in the form and manner prescribed.

One (1) violation of 49 C.F.R. §375.519(a) – Failing to prepare a weight ticket in the form and manner prescribed.

B. This claim was served to the RESPONDENT on September 11, 2008.

2. RESPONDENT is subject to the jurisdiction of the FMCSA. The statutory basis for the jurisdiction and the claim as set forth and detailed in the above-referenced civil penalty proceeding is found in 49 USC Subtitle III, General and Intermodal Programs; 49 USC Subtitle IV, Interstate Transportation, Part B, Motor Carriers, Water Carriers, Brokers, and Freight Forwarders; 49 USC Subtitle VI, Motor Vehicle and Driver Programs, Part B, Commercial; including, but not limited to, 49 USC § 521 (“Civil Penalties”); 49 USC § 5123(c) (“Civil Penalty”); and 49 USC § 14901 (“General Civil Penalties”).
3. Pursuant to the Federal Claims Collection Act of 1966, 31 USC Chapter 37, Subchapter II, and the regulations of the Federal Motor Carrier Safety Administration in 49 CFR Part 386, the parties desire to settle the claim. This agreement for settlement of the claims is made pursuant to 49 C.F.R § 386.22. The FMCSA agrees to conditionally suspend **\$5,200.00** of the **\$25,600.00** in Case Number NJ-2008-0135-US0662 subject to the following terms and conditions:
  - A. **RESPONDENT** pays the non-suspended portion of the civil penalty in accordance with the terms of this settlement agreement, including all due dates and procedures for payment.
4. In consideration of the settlement of the above-described claim, and subject to the terms and conditions of this settlement agreement, **RESPONDENT** agrees to pay the FMCSA, and FMCSA agrees to accept the amount of **\$20,400.00**, in twelve (12) payment(s). The Parties stipulate this settlement agreement resolves only the claim set forth in Paragraph 1 of this settlement agreement. Further, the Parties stipulate nothing in this settlement agreement shall be construed to relieve or limit **RESPONDENT’s** duty to comply with all applicable United States Department of Transportation statutes and implementing regulations, including the FMCSRs, HMRs, and the FMCCRs.
5. Payment may be made electronically through the SAFER website at <http://safer.fmcsa.dot.gov/> by selecting the "Online Fine Payment" option under the FMCSA Services section. Alternatively, payments may be made by mailing a **cashier’s check, certified check or money order** payable to the **Federal Motor Carrier Safety Administration**. To expedite processing and ensure proper credit, checks should be annotated with the FMCSA Case Number. Payments are to be mailed to:

Federal Motor Carrier Safety Administration  
Eastern Service Center  
802 Cromwell Park Drive, Suite N  
Glen Burnie, MD 21061

The first payment of **\$1,700.00** is due no later than August 1, 2009.

The second payment of **\$1,700.00** is due no later than September 1, 2009.

The third payment of \$1,700.00 is due no later than October 1, 2009.  
The fourth payment of \$1,700.00 is due no later than November 1, 2009.  
The fifth payment of \$1,700.00 is due no later than December 1, 2009.  
The sixth payment of \$1,700.00 is due no later than January 1, 2010.  
The seventh payment of \$1,700.00 is due no later than February 1, 2010.  
The eighth payment of \$1,700.00 is due no later than March 1, 2010.  
The ninth payment of \$1,700.00 is due no later than April 1, 2010.  
The tenth payment of \$1,700.00 is due no later than May 1, 2010.  
The eleventh payment of \$1,700.00 is due no later than June 1, 2010.  
The twelfth payment of \$1,700.00 is due no later than July 1, 2010.

6. Failure to pay in accordance with the terms of this settlement agreement shall be considered a breach of this settlement agreement and will result in the loss of any suspensions in penalties for claims found to be valid, and the reinstatement of the original amount claimed. The original amount claimed (less any payments previously made) will be due immediately. **For example, if any payment is not received by the due date, the payment plan set out above will be void and FMCSA will take steps to immediately collect the entire remaining original amount claimed.** In addition, interest, penalties, and administrative charges will be assessed on the total amount of the debt remaining at the maximum allowable rate and in accordance with FMCSA procedures. Any payment(s) made after a breach of any term and/or condition of this settlement agreement, including failure to pay in accordance with the terms of this settlement agreement, will be applied toward the balance of the original amount claimed, and shall not affect any right of FMCSA to pursue any remedy for breach of this settlement agreement. **If the entire amount is not paid within ninety (90) days of the missed due date, RESPONDENT will be prohibited from operating in interstate commerce and, if applicable, RESPONDENT'S registration will be suspended or revoked in accordance with 49 CFR §§ 386.83 and 386.84.**
7. The Parties stipulate the claim set forth in the above-described Notice of Claim is valid. By signing this settlement agreement, RESPONDENT waives any right it may have to subsequently challenge the validity of such claim. The Parties further stipulate this settlement agreement is a contract voluntarily entered into by the Parties which may be enforced. Further, failure to comply with the enumerated terms and conditions of this settlement agreement, including the terms and conditions set forth in Paragraph 3, will void and vacate any payment plan set forth in this agreement, and the original amount claimed (less any payments previously made) will be due. **FMCSA may pursue any action for violations of the FMCSRs, HMRs, and/or the FMCCRs and/or for recovery of the full penalty asserted in the Notice of Claim.** Any forbearance by FMCSA in exercising any right or remedy under this settlement agreement or provided by law, including, without limitation, FMCSA's acceptance of late payment(s) or payment(s) in amounts less than the amount due, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this settlement agreement or any part thereof.
8. This settlement agreement **is to be executed by the RESPONDENT** and returned to **FMCSA**. This settlement agreement is not binding upon FMCSA until executed by the Field Administrator. Prior to the execution of this agreement by the Field Administrator, this agreement is an offer in compromise by the **RESPONDENT** and may not be withdrawn for a period of thirty (30) days after it is executed by the **RESPONDENT**. Upon execution of this settlement agreement by the Field Administrator, the settlement agreement will become the Final

Agency Order in this proceeding. If this settlement agreement requires approval by the Assistant Administrator or the Administrative Law Judge, neither party may withdraw its consent to the settlement agreement for a period of thirty (30) days from the date the Field Administrator signs the Agreement, and the Settlement Agreement becomes the Final Agency Order in this proceeding as provided by 49 CFR § 386.22(c)-(e).

9. **RESPONDENT** acknowledges that it has received adequate notice of the FMCSA's claim and waives any and all rights it may have to further notice or to further details of the allegations that gave rise to the claim. Further, **RESPONDENT** expressly acknowledges that FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claim against **RESPONDENT**.
10. Execution of this settlement agreement will constitute admission of the violation(s) set forth in this agreement and these violations shall constitute prior offenses under 49 USC § 521(b)(2)(D), and/or 14901(c), and/or 5123(c), which will lead to higher penalties in future enforcement actions and adverse future SafeStat rankings
11. This settlement agreement, including all enumerated conditions related to suspension of a portion of the assessed penalty, shall apply to, be binding upon, and enforceable against **RESPONDENT** and **RESPONDENT's** successors and assigns, including but not limited to, subsequent purchasers, transferees, and/or successor entity(ies).
12. This settlement agreement may be executed in counterparts, all of which when taken together shall constitute a fully executed original. A facsimile signature on this settlement agreement shall constitute an original signature for purposes of execution.
13. This settlement agreement shall be considered jointly drafted by the Parties, and constitutes the final and exclusive agreement between the Parties in this proceeding. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded. Notwithstanding this provision, the Notice of Claim, as referenced in Paragraph 1 of this settlement agreement, is incorporated by reference in this Agreement.
14. **RESPONDENT** hereby acknowledges, represents, and warrants that he or she or its representative has carefully read and understands this Agreement, all of its terms and conditions, and its final and binding effect, and has been afforded sufficient time and opportunity to review this settlement agreement with advisors or attorneys of his, her, or its choice, has had an opportunity to negotiate with regard to the terms of this settlement agreement, is fully competent to enter into this settlement agreement, and has signed this settlement agreement knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind the entity in the signing of this settlement agreement.
15. Should any provision of this settlement agreement be held invalid or illegal, such illegality shall not invalidate the whole settlement agreement, but, rather, the settlement agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

A-Topp's Moving & Storage, LLC  
CASE # NJ-2008-0135-US0662  
USDOT No. 1331728

By:   
Gila Bretter, President

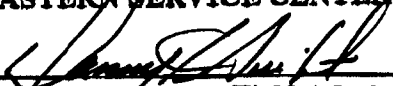
Date: 7-2-09

**PLEASE FAX THE SIGNED AGREEMENT TO: (443) 703-2253**

**SIGNED AGREEMENT MAY BE SENT BY MAIL TO:**

MOTOR CARRIER DOCKET CLERK  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
EASTERN SERVICE CENTER  
802 CROMWELL PARK DRIVE, SUITE N  
GLEN BURNIE, MD 21061

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
EASTERN SERVICE CENTER

By:   
Robert W. Miller, Field Administrator

Date: 7/6/2009